

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

286 Rider Ave Development LLC,

Appellant,

v.

Be-Aviv 286 Rider LLC and 286 Rider Ave
Acquisition LLC,

Appellees.

21-CV-8812 (RA)

ORDER


RONNIE ABRAMS, United States District Judge:

“A district court may affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings.” *Margulies v. Hough (In re Margulies)*, 566 B.R. 318, 328 (S.D.N.Y. 2017). In the course of its expedited appeal of the Bankruptcy Court’s denial of its motion for reconsideration, Appellant moved to supplement the record with materials—filed after the Bankruptcy Court had ruled—that it described as “critical to the underlying determination whether the Bankruptcy Case was properly authorized and whether the Bankruptcy Court had jurisdiction over the Bankruptcy Case.” Appellant’s Br. at 26. The Bankruptcy Court did not have an opportunity to review these filings in connection with Appellant’s motion, and rightly recognized it lacked jurisdiction to consider them when Appellant again moved to dismiss the case. Tr. of November 16, 2021 Hearing at 18–21. Remand is thus the proper course of action. *See In re Jeweled Objects LLC*, No. 12 CIV. 8559 (KBF), 2013 WL 6017902, at *3 (S.D.N.Y. Nov. 1, 2013); *see also Korn v. Franchard Corp.*, 456 F.2d 1206, 1208 (2d Cir. 1972) (observing that “where circumstances have changed between the ruling below and the decision on appeal, the preferred procedure is to remand to give the district court an opportunity to pass on the changed circumstances”).

Accordingly, the Court hereby remands this action to the Bankruptcy Court for consideration of the additional materials, to the extent it sees fit.

SO ORDERED.

Dated: January 13, 2022
New York, New York



RONNIE ABRAMS
United States District Judge